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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,940	12/09/2003	Boris Ginzburg	P-5979-US	2701
49444 7590 06/07/2007 PEARL COHEN ZEDEK LATZER, LLP 1500 BROADWAY, 12TH FLOOR NEW YORK, NY 10036			EXAMINER JAIN, RAJ K	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 06/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/729,940

Applicant(s)

GINZBURG ET AL.

Examiner

Raj K. Jain

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-11, 16-18, 23-25 and 30-32 is/are rejected.
- 7) ☒ Claim(s) 4-7, 12-15, 19-22, 26-29, 33 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All . b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/5/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. With respect to claims 1, 9 and 16, the claims recite a mathematical manipulation of data with no practical application. According to MPEP 2106.02 [R-5] "...claims define nonstatutory processes if they: – consist solely of mathematical operations without some claimed practical application; or simply manipulate abstract ideas....".

Appropriate correction is required to overcome practical application requirement.

Claims dependent upon the rejected base claims are also rejected.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 8-11, 16-18, 23-25 and 30-32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Moutarlier (US 2004/0028072 A1).

Art Unit: 2616

Regarding claims 1, 9, 16, 23 and 30, Moutarlier discloses a method comprising: controlling an access of a first station 150 (fig. 1) to a shared wireless media 120 based on a collision rate parameter calculated from at least a first probability value representing a probability to transmit by the first station a data packet within a desired time slot of a contention window (see paras 27, 28, Fig. 4, a probability value is calculated for an interval less than a contention window) and a second probability value representing a probability of said data packet, when transmitted by the first station within the desired time slot of said contention window, to collide with at least one other data packet transmitted by a second station (see para 40-51, fig. 4, a probability value for two or more clients can be calculated with a back-off interval as shown in graph of Fig. 4).

Regarding claims 2, 10, 17, 24, and 31, Moutarlier discloses calculating a third probability value representing a probability of the data packet transmitted by the first station, when transmitted outside the contention window, to collide with at least one other data packet, wherein the collision rate parameter is calculated from at least the first, second and third probability values (see fig. 4 and para 51, the graph depicts probability values for n devices.).

Regarding claims 8, Moutarlier discloses calculating of data for each data packet (Fig. 4).

Regarding claims 3, 11, 18, 25 and 32, the examiner takes official notice that the use of histograms to represent data is well known in the arts, and one skilled in the art will readily appreciate that a histogram may be incorporated to provide a visual status of

Art Unit: 2616

collision rates in a wireless network to therefore modify link statuses and capacity requirements as necessary.

Allowable Subject Matter

Claims 4-7, 12-15, 19-22, 26-29, 33 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raj K. Jain whose telephone number is 571-272-3145. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Application/Control Number: 10/729,940

Page 5

Art Unit: 2616

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raj K. Jain/

A handwritten signature in black ink, appearing to read "R. Jain", written over the printed name.

Art Unit 2616

May 31, 2007